

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION

SETTLEMENT AGREEMENT  
FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2008-0124

IN THE MATTER OF  
CITY OF HEALDSBURG  
WASTE COLLECTION, TREATMENT AND DISPOSAL FACILITY  
WDID NO. 1B820460SON

This Settlement Agreement for Administrative Civil Liability Complaint No. R1-2008-0124 (this "Agreement") is made and entered into by the Assistant Executive Officer ("Assistant Executive Officer") of the California Regional Water Quality Control Board, North Coast Region, ("Regional Water Board") and the City of Healdsburg (the "City"), collectively referred to as "the Parties." The Assistant Executive Officer and the City are hereinafter collectively referred to as the "Parties."

RECITALS:

- A. On December 12, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2008-0124 attached hereto as Attachment A ("Complaint"). The Complaint alleged violations of effluent limitations and discharge prohibitions during the period from November 30, 2004 to April 30, 2008 in violation of Waste Discharge Requirements ("WDRs") Order No. R1-2004-0111, WDRs Order No. R1-2005-0084 and Cease and Desist Order No. R1-2006-0002. The Complaint proposed that the City pay a civil penalty in the amount of \$369,000.
- B. The Parties desire to enter into this Agreement to settle the violations alleged in the Complaint. Certain terms of this Agreement will be included in an Administrative Civil Liability Order (ACL Order), which is subject to approval by the Regional Water Board and is subject to public comment as provided below.
- C. The Parties agree that full compliance with this Agreement constitutes settlement of all claims arising out of the alleged violations specified in the Complaint.
- D. The general terms of the settlement are that the City will pay a total penalty of \$369,000 as follows:
  - a. The City will pay administrative civil liability of \$177,000 to the State Water Resources Control Board's ("State Water Board") Cleanup and Abatement Account.

- b. In lieu of the remaining \$192,000 penalty, the City agrees to complete the Supplemental Environmental Project ("SEP") described in Attachment B attached hereto ("SEP Description") at a cost of no less than \$192,000. The City will comply with the specific terms and conditions described in the SEP Description, which is incorporated into this Agreement. Any public information on outreach materials produced by the City concerning the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.
- E. Subject to the qualifications set forth in paragraph 8 below, the Assistant Executive Officer has the authority to enter into this Agreement in accordance with Water Code section 13323 and Government Code section 11415.60. The City's representative signing this Agreement confirms that s/he has the authority to bind the City to the terms of this Agreement.

NOW THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Both Parties agree to comply with the terms and conditions of this Agreement.
2. Subject to Paragraph 3, the Parties agree that they will support, advocate for, and promote the proposed Administrative Civil Liability Order attached hereto as Attachment C ("ACL Order"). The Parties further agree that they will not contest the proposed ACL Order before the Regional Water Board, the State Water Board or any court.
3. Paragraph 2 shall not apply in the event that the Executive Officer or Regional Water Board considers adopting an order that differs in any substantial way from the proposed ACL Order. In that event, the Parties will have full rights to a hearing as set forth in the Notice for this Proceeding.
4. The Assistant Executive Officer agrees that this Agreement fully resolves the allegations in the Complaint and assesses civil penalties for all violations of effluent limitations and discharge prohibitions from November 30, 2004 to April 30, 2008. The Assistant Executive Officer further agrees that once the proposed ACL Order is approved, the Regional Water Board will not to pursue any further administrative or judicial action of any kind against the City for those effluent or discharge violations, and that violations of all effluent limitations and discharge prohibitions that occurred between November 30, 2004 to April 30, 2008 will be res judicata. The Regional Water Board maintains the ability to initiate other administrative or judicial enforcement actions against the City for violations that are not subject to this Agreement.


5. The City agrees to pay an administrative civil liability of \$177,000 to the State Water Board's Cleanup and Abatement Account within 45 days of the Regional Water Board's approval of the ACL Order. Notwithstanding the foregoing, the City's payment obligation shall not accrue while any administrative or judicial challenge to the ACL Order is pending. The City agrees to complete the SEP for not less than \$192,000 in accordance with the specific terms and conditions set forth in the SEP Description.
6. Subject to Paragraph 5 above, if the City determines that it does not wish to perform the proposed SEP and an alternative SEP of equal or greater value is not approved by the Regional Water Board or the Executive Officer, the City will promptly pay an administrative civil liability amount of \$192,000 (in addition to the amount of \$177,000 described in Paragraph 5 above) to the State Water Board's Cleanup and Abatement Account. Additionally, in the event that the SEP is completed but City expenditures on the SEP are less than \$192,000, the City shall pay any remaining balance to the State Water Board's Cleanup and Abatement Account.
7. The City agrees to dismiss its Petition for Review of Order No. R1-2004-0064, Waste Discharge Requirements for the City of Healdsburg Wastewater Treatment Plant, and Cease and Desist Order No. R1-2004-0065 filed with the State Water Board on November 5, 2004 ("City Petition") within 45 days following the Regional Water Board's approval of the proposed ACL Order provided that the following conditions have been satisfied:
  - a. The Regional Water Board has adopted the proposed ACL Order substantially in the form attached hereto as Attachment C; and
  - b. No third party has initiated an administrative or judicial challenge to the ACL Order, such as a petition for review of the ACL Order pursuant to Water Code sections 13320 or 13330.

The Parties acknowledge and agree that dismissal of the City Petition pursuant to this paragraph will not waive the City's rights to assert objections, arguments and claims regarding the terms and conditions of any future permit or order issued to the City by the Regional Water Board or State Water Board on any of the grounds set forth in the City Petition. While the Regional Water Board agrees not to assert any such waiver against the City, the Parties acknowledge and agree that this paragraph will not preclude the Regional Water Board from asserting arguments in future proceedings that are not based on the dismissal of the City Petition. The dismissal of the City Petition shall have no effect on the right and ability of the Parties to assert objections, arguments and claims in future proceedings.

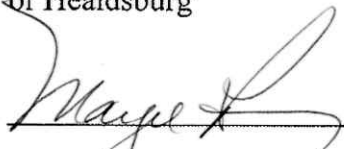
8. The Parties understand that the proposed ACL Order must be noticed for a 30-day public review period. In the event that objections are raised during the public comment period for the proposed ACL Order, the Parties agree to meet and confer in advance of the public hearing concerning such objections, and may agree to revise or adjust this Agreement and/or offer proposals to the Regional Water Board regarding the terms of the ACL Order as necessary or advisable under the circumstances.
9. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
10. This Agreement shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be made in writing and signed by both Parties.
11. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
12. If any part of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.
13. In settling this matter, the City does not admit to any of the findings of the Complaint, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the City agrees that in the event of any future enforcement actions by the Regional Water Board, the ACL Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.
14. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever.
15. The Parties shall execute and deliver all documents and perform all further acts that may reasonably be necessary to effectuate the provisions of this Agreement.
16. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or electronic signatures are acceptable.
17. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

California Regional Water Quality Control Board,  
North Coast Region

By:  December 22, 2009  
Assistant Executive Officer

City of Healdsburg

By:   
City Manager

APPROVED AS TO FORM:

By:   
Mike Gogna  
City Attorney

List of Attachments

Attachment A: ACL Complaint R1-2008-0124

Attachment B: Supplemental Environmental Project Description

Attachment C: Proposed ACL Order